

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SHARON BOBBITT, Individually and On)	No. 04-12263-PBS
Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ANDREW J. FILIPOWSKI, et al.,)	
)	
Defendants.)	
)	
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JAMES F. HOWARD, Individually and On)	No. 06-11072-PBS
Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ANDREW J. FILIPOWSKI, et al.,)	
)	
Defendants.)	
)	
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DECLARATION OF KEN KEATLY

1 I, Ken Keatly, declare and state as follows:

2 1. I am over 18 years of age. I make this declaration based upon my own personal
3 knowledge and if called upon, I could and would competently testify to the facts contained
4 herein.

5 2. I work for L.R. Hodges & Associates, Ltd. ("LRH&A"), a private investigation
6 firm licensed by the State of California, Bureau of Security and Investigative, License Number
7 PI 18129. LRH&A provides investigative and consulting services in the area of complex civil
8 litigation. LRH&A has investigated over 650 federal and state securities, derivative, anti-trust
9 and consumer class actions over the last 13-plus years.

10 3. I have been employed by LRH&A for over eight years, and in that time, I have
11 worked on well-over 150 securities class actions, including playing a lead investigative role on
12 the Enron, Qwest, Cisco, Titan Corporation, and Surebeam Corporation securities cases, among
13 many others that have resulted in favorable settlements for our clients. As both Director of
14 Investigations and Case Manager, I manage assignments received from the firm's clients to
15 ensure the development of meaningful results to the extent possible within the resources and
16 opportunities available and appropriate to the specific assignment.

17 4. The law firm of Cauley Geller Bowman & Rudman, LLP retained LRH&A on
18 September 30, 2003 to render investigative services in connection with the divine, Inc. Securities
19 Litigation. Our principal assignment, typical of securities investigations, was to identify, locate,
20 and interview former employees and other knowledgeable third-party witnesses in an effort to
21 develop detailed facts to meet the strict pleading requirements of the Private Securities Litigation
22 Reform Act of 1995.

23 5. A key objective of my job is to ensure that LRH&A executes the most efficient
24 and effective investigation possible for the good of our client and the class. My work includes
25 receiving the assignment from the client, determining the client's needs and objectives, and
26 formulating an investigation plan appropriate to the assignment. Since LRH&A specializes in
27 complex litigations, particularly federal securities actions, formulating an investigation plan
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1 includes a detailed assessment of the defendant entity involved, the specific class allegations, in-
2 depth research and analysis of industries and technologies relevant to the defendant company,
3 and understanding the accounting, public disclosures and public financial reporting issues central
4 to the case. As a case manager, I not only interview witnesses, I also oversee the work of
5 investigation staff and personnel, who are actively engaged in identifying and locating
6 prospective witnesses, contacting and interviewing those witnesses, drafting memoranda
7 memorializing their findings (the substance of which is incorporated by our clients into their
8 pleadings), researching various often intricate issues, and maintaining detailed case files of the
9 considerable findings developed in the course of an active investigation. This was exactly the
10 nature of the work that I, and the team I oversaw, performed on the divine securities litigation.

11 6. Securities actions are inherently complex, and the divine case was no exception.
12 divine's business model was very unconventional and involved acquiring myriad different
13 business entities of often widely different types and business models. The acquisitions and terms
14 of the acquisitions were topics of interest in the investigation and remained of interest as divine
15 itself entered into bankruptcy and those assets were divested. Understanding the company's
16 acquisition strategy and subsequent divestitures of those assets required in-depth, intricate
17 research performed by our research staff. The convolutions of divine's business model and
18 acquisition strategy meant that divine had myriad diverging lines of business that ranged from
19 web-hosting to fulfilling magazine subscriptions, as well as less-than-straightforward real estate
20 transactions and property holdings. That one of the company's subsidiaries was involved in a
21 criminal investigation shortly before divine's own entry into bankruptcy added yet another level
22 requiring investigation.

23 7. Fundamental to a securities investigation is the need to identify and locate
24 prospective witnesses who can potentially address the case issues and then contact them in hopes
25 they will participate in an informal interview in which they are under no obligation to participate
26 – again, all with the goal of meeting the PSLRA's very stringent pleading standards. When
27 receiving an assignment, we are solely reliant upon our proprietary processes, utilization of
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1 sophisticated databases, online and public filing resources and, most importantly, the skill and
2 experience of our personnel who know how utilize these resources. The investigative services
3 performed by LRH&A are billed at varied professional rates based upon the particular tasks
4 performed and services rendered, as well as the skill-level and experience possessed by the
5 investigator. Our team is comprised of personnel with diverse educational backgrounds and
6 professional credentials.

7 8. The investigator who performed witness interviews with me on the divine case
8 had practical experience investigating multiple litigations of his own, and was a licensed, non-
9 practicing attorney who had formerly practiced law (and, indeed, has returned to the practice of
10 law). Likewise, our Issues Researchers possess considerable levels of professional experience
11 and educational credentials needed to work on some of the most complex elements of the Enron
12 securities litigation, and have years of professional experience in research and library science;
13 one of these Issues Researchers is also a non-practicing attorney. As indicated above, witness
14 development research is a very critical, detail-oriented and analytical role within our
15 organization, which requires reviewing and assessing the relevance of copious amounts of data
16 derived from diverse databases, as well as managing the development, production and
17 presentation of this data throughout the course of the litigation, which includes tracking and
18 locating new witness leads from witness interviews as the case progresses. Locating subjects is
19 also a very important and often-nuanced task (that can, for instance, require the elimination of
20 numerous multiple subject matches for common names to successfully locate the correct
21 subject). Witness development work is important throughout the duration of a case and is not
22 just used during the period of active outreach to witnesses, but also during the formal Discovery
23 stage of litigation, and typically as a foundation for Rule 26 disclosures. It is a specialized and
24 highly critical role that we have determined through many years of practical experience is best
25 performed by personnel dedicated to the position and capable of performing the detail-intensive
26 and analytical work required within the typically compressed deadlines under which our
27 investigations must be conducted. Our witness development personnel have varied college
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1 degrees, post-graduate work, extensive training and experience, in addition to the skill, tenacity
2 and exactitude vital to this position.

3 9. As part of our investigation (and without the benefit of formal discovery),
4 LRH&A's witness development and research staff identified and located as necessary several
5 hundred witnesses, including former divine employees, as well as subjects with relevant
6 associations to the defendant company and/or individual defendants. Of this potential witness
7 pool, LRH&A made direct contact with over 35 witnesses, resulting in many lengthy and
8 substantial interviews and made overtures or contact attempts to numerous others over the course
9 of our investigation. The objective of these informal interviews was to develop factual
10 information on the myriad complex issues unique to the divine litigation. Through these contacts
11 and interviews, the factual information we developed was drafted into formal investigation
12 memoranda, the substance of which was used in amending the complaint has contributed to the
13 current settlement.

14 10. To perform our investigation and derive results relating to the allegations,
15 LRH&A's witness-development personnel expended 73.4 hours at a rate of \$115.00 per hour to
16 research, identify, and confirm the employment status of certain witnesses, as well as managing
17 and updating an ever-changing witness list to support other investigative team members. Our
18 research staff expended 133.50 hours at rates ranging between \$150.00-\$200.00 per hour to
19 perform research and report on emerging case issues and locating numerous prospective
20 witnesses. The case manager and interviewing investigator expended a combined 231.10 hours
21 at rates between \$150.00-\$225 per hour to perform overall strategizing, planning and execution
22 to contact, engage and conduct interviews with targeted third-party witnesses, and to prepare
23 comprehensive interview summaries and other case reports. These team members were also
24 involved in analyzing key case issues, as well as establishing and executing the joint litigation-
25 investigation team plan, and participating in client briefings. Our administrative support
26 personnel handled various case filing, printing and organizing activity to support the efficient
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1 administration of the case. Our professional services rates are the same for all of the cases that
2 we work whether they are securities cases or other complex litigations.

3 11. In sum, LRH&A's team members expended 438 combined investigative hours for
4 a total cost to shareholders of \$80,478.56, which includes \$72,817.50 in fees and \$7,661.06 in
5 investigation-related expenses. The overall blended hourly rate charged on this case for all
6 combined services rendered was approximately \$166.25 per hour.

7 12. I declare under penalty of perjury that the foregoing is true and correct. Executed
8 this 1st day of July, 2008, at San Diego, California.

9 
10 KEN KEATLY

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 1, 2008.

s/ Ellen Gusikoff Stewart

ELLEN GUSIKOFF STEWART

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